Supreme Court, U.S.
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PETITIONERS' REPLY TO BRIEF IN OPPOSITION

No. 88-1594

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

DEBRA J. WINROD, et al.,

Petitioners,

v.

FORD MOTOR COMPANY, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

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Contrary to the assertions made in the Brief of Ford Motor Company, this case was neither easy nor simple. Counsel for Ford Motor Company intentionally caused the litigation to be more time consuming and more difficult than it need have been. For example, when Ford made its opening discovery request, Plaintiffs' counsel offered Ford counsel a copy of Plaintiffs' attorney's entire file, but Ford's attorney rejected it as being inadequate and insufficient.

Plaintiffs' counsel made frequent and sustained efforts to settle the case, but Ford denied liability until the end. Just before trial, Ford made a settlement offer which contained an inadequate attorney fee factor of approximately $1,000.

Ford asserts that the case was simple or "simplistic." Plaintiffs' Complaint was

15 pages long and contained seven counts. Plaintiffs' allegations and evidence were interwoven to present claims of violation of the Magnuson-Moss Act, violations of the Ohio Consumer Sales Practices Act, claims for relief under the Ohio Commercial Code (Uniform Commercial Code), and claims for equitable relief.

Ford asserts that the trial court concluded that Plaintiffs' request for " * * * nearly $25,000 in attorney fees and expenses was entirely unreasonable * * * " is simply not true. The trial court made no such observation. The trial court stated no reason for its award and no reason for reduction of Plaintiffs' request.

The Plaintiffs presented Attorney Douglas Roberts who was quite learned in the area of Magnuson-Moss and consumer complaints as a professional witness on fees. Mr. Roberts testified that the

value of the services of Plaintiffs' counsel through trial, plus expenses was $21,063.99. Additional time was required of Plaintiffs' counsel in preparing for and presenting the fee petition and the hearing thereon, and additional expenses included fees for the expert witness and fees for the extra counsel who had to be employed to present all of the fee petition testimony and evidence. Where Plaintiffs' counsel's fee is contested, Plaintiffs are entitled to recover fees and expenses incurred in presenting the contested fee matter. Delaware Valley Citizens Council for Clean Air, et al. v. Commonwealth of Pennsylvania, et al., (U.S.D. Ct. E.D. Pa., 1984), 581 F. Supp. 1414.

Ford presented no testimony or evidence of the value of Plaintiffs' counsel's services. Ford has relied totally upon an argumentive posture unsupported by any

evidence or testimony as to the value of Plaintiffs' counsel's services or the validity of the expenses incurred by Plaintiffs.

It is apparent that Ford has adopted a policy that it will make obtaining Magnuson-Moss relief so extraordinarily expensive to both the Plaintiffs and to Plaintiffs' counsel that Plaintiffs' counsel will not again undertake a Magnuson-Moss case. Competent counsel will not accept such cases unless there is reasonable prospect to be paid for their time and expense. Ford Motor Company has been successful in preventing Plaintiffs from obtaining a reasonable fee and expense award, and, if the Winrod decision stands, it will succeed in discouraging other Ohio consumers from availing themselves of the Magnuson-Moss remedy.

At page 10 of its Brief, Ford relates that, "The Franklin County Court of Appeals acknowledged implicitly that the time submitted by Petitioners did not reflect sound billing judgment." This non sequitur is totally without support in the record.

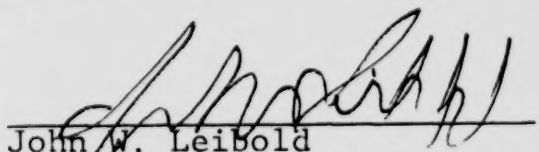
Ford misconstrues Hensley et al. v. Eckerhart, et al., 461 U.S. 124 103 Sup. Ct. 1933 76 Law. Ed 2d 40 1983, and City of Riverside, et al. v. Santos Rivera, et al., 477 U.S. 561, 106 Sup. Ct. 2686, 91 Law. Ed. 2d 466 1986, when at page 10, it says there is no support for the proposition that an award of attorney fees must be based solely on actual time expended. The time expended criteria is expressly stated in Magnuson-Moss at 15 U.S.C., §2310(d)(2).

Plaintiffs' Brief in this case illustrates the conflict between the Franklin County Court of Appeals Decision and City

of Riverside v. Santos Rivera, supra. City of Riverside says proportionality must not be used. Franklin County Court of Appeals in Winrod v. Ford says proportionality is the rule.

Petition for Writ of Certiorari should be granted to resolve this conflict, to re-establish the efficacy of Magnuson-Moss remedies in the State of Ohio as well as elsewhere throughout the nation, and to implement Congressional policy in enacting Magnuson-Moss. Without certiorari in this case, Magnuson-Moss is as dead as a door nail in Ohio.

Respectfully submitted,



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